

**CROWELL & MORING LLP**

1001 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20004-2595

(202) 624-2500

FACSIMILE (202) 628-5116

**DOCKET FILE COPY ORIGINAL**

**WILLIAM D. WALLACE**  
(202) 624-2807  
wwallace@crowm.com

SUITE 1200  
2010 MAIN STREET  
IRVINE, CALIFORNIA 92614  
(714) 263-8400  
FACSIMILE (714) 263-8414  
  
180 FLEET STREET  
LONDON EC4A 3HD  
44-171-413-0011  
FACSIMILE 44-171-413-0333

November 24, 1997

BY HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, DC 20554

**RECEIVED**  
NOV 24 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

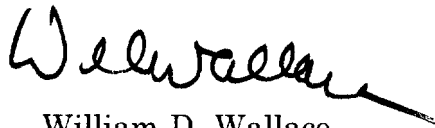
RE: WT Docket No. 97-82

Dear Ms. Salas:

Transmitted herewith for filing with the Commission on behalf of Hyundai Electronics America are an original and eleven copies of its Petition for Reconsideration in the above-referenced matter.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,



William D. Wallace

cc: A. Jerome Fowlkes  
Sandra Danner

10000+11

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
Regarding Installment Payment )  
Financing for Personal Communications )  
Services (PCS) Licensees )  
\_\_\_\_\_ )

WT Docket No. 97-82

RECEIVED  
NOV 24 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules (47 C.F.R. § 1.429), Hyundai Electronics America ("HEA"), by its undersigned attorneys, hereby requests that the Commission reconsider the rules and policies adopted in the Second Report and Order.<sup>1</sup> As the Commission is aware, HEA has loaned approximately \$50 million to General Wireless, Inc. ("GWI"), the ultimate parent of 14 C-block PCS licensees, and these funds were used to assist in fulfilling the financial obligations of the subsidiaries incurred in the C-block auction.<sup>2</sup> The 14 GWI subsidiaries recently filed Chapter 11 petitions in the Bankruptcy Court for the Northern District of Texas. Accordingly, HEA has a substantial interest in the rules and policies adopted for C-block licensees in this proceeding.

---

<sup>1</sup> FCC 97-342 (released Oct. 16, 1997) ("Order"). Public Notice of the rules adopted in the Second Report and Order was published in the Federal Register on October 24, 1997. Installment Payment Financing for Personal Communications Services (PCS) Licensees, 62 Fed. Reg. 55348 (Oct. 24, 1997). Hence, HEA's petition is timely pursuant to Section 1.429(d).

<sup>2</sup> See GWl PCS, Inc., 7 CR 953 (WTB 1997).

HEA is filing this petition to recommend that the Commission reconsider generally its response to the "apparent difficulties in accessing the capital markets" for C-block PCS licensees at issue in this proceeding. See Order, ¶ 11. As the Commission itself notes, the average prices per pop in the C-block auction "are markedly higher than the other PCS bands." Id., ¶ 10. These "markedly higher" prices translate into markedly higher financial obligations to the United States for C-block licensees. And, the record indicates that, at least with respect to some C-block licensees, "the value of the FCC obligation exceeds the value that equity investors are currently willing to assign to the entire company."<sup>3</sup> Thus, as a result of post-auction developments, some C-block bidders that relied upon their ability to raise funds in the financial markets have since experienced difficulty in raising capital commensurate with the value that they placed upon the licenses.<sup>4</sup>

These events are not necessarily the result of improvident bidding. The Commission's rules for C-block licensees do not restrict entrepreneurs to bid only in reliance on the funds which they can raise on their own; indeed, the rules sanction investment from larger companies which could not qualify for the C-block

---

<sup>3</sup> Comments of Norman C. Frost, Jr., Managing Director, Bear Stearns & Co. Inc., at 1 (filed June 23, 1997).

<sup>4</sup> See, e.g., Letter from Thomas Gutierrez, Esq., et al., to Michele C. Farquar, Esq., Chief, Wireless Telecommunications Bureau (Mar. 13, 1997); Letter from Leonard S. Sawicki, Director, FCC Affairs, MCI Telecommunications Corp., to Mr. William F. Caton, Secretary, Federal Communications Commission (May 1, 1997); Letter from James H. Barker and Michael S. Wroblewski, Counsel to Fortunet Communications, L.P., to Mr. William F. Caton, Secretary, Federal Communications Commission (May 9, 1997).

auction.<sup>5</sup> Thus, financing for new competitors in the marketplace appeared readily available.<sup>6</sup> Compounding the problem encountered by C-block licensees was the increase in available spectrum as subsequent auctions for the D-, E- and F-blocks commenced in 1996.<sup>7</sup> Nevertheless, all totaled, these circumstances present a fairly unique problem which requires an appropriately tailored response.

HEA believes that the Commission's response in the Second Report and Order reflects too narrow a view of the problem, and, consequently, the solution(s). The Commission has, in essence, attempted to fit the apparent plight of C-block auction winners into the rules adopted for winning bidders who are found in default. That is, the Commission appears to have adopted a philosophy in this proceeding that relies upon the bids accurately reflecting the current value of the C-block licenses, and, therefore, the starting point for any options for licensees as well as any penalties which may be imposed. See Order, ¶¶ 19, 66. Of course, while some of the C-block bidders may have defaulted on their financial

---

<sup>5</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding: Fifth Report and Order, 9 FCC Rcd 5532, 5601-02 (1994); Fifth Memorandum Opinion and Order, 76 RR 2d 945, ¶¶ 58-76 (1994); Sixth Report and Order, 11 FCC Rcd 136, 143-50 (1995).

<sup>6</sup> Indeed, the Commission was aware during the C-block auction that there were questions whether C-block licensees would be able to raise capital in the financial markets. See Communications Daily, at 5-6 (Apr. 2, 1996) (citing WTB Chief as stating that FCC does not foresee problems arising from high bid prices in C-block auction, and does not need to stop bidding because spectrum is supposedly overpriced).

<sup>7</sup> Cf. Affirming and Dissenting Separate Statement of Chairman Reed E. Hundt (WT Docket No. 97-82), at 2 (released Oct. 16, 1997) ("I was aware last December that the market was unlikely to finance many of the largest bidders.").

obligations had the Commission not suspended installment payments, the subject of this proceeding is not defaulting bidders. Rather, this proceeding was initiated to review the unique problems encountered by C-block licensees -- perhaps through no fault of their own -- in accessing capital.<sup>8</sup> The Commission's response should be equally focused on this unique problem rather than relying on rules and policies adopted for different scenarios.<sup>9</sup>

The Commission's overly narrow perspective can be readily seen in the penalties adopted for C-block licensees electing one of the three options (disaggregation, amnesty and prepayment). The penalties range from 30% to 100% of the downpayment submitted by auction winners, in effect, 3% to 10% of the bid price depending upon the option. The Commission states that such penalties are consistent with its penalties for defaulting bidders, which are designed to have a "deterrent effect against bidding excessively," "discourage default and ensure that bidders have adequate financing." Order, ¶ 65; see also id., ¶ 55. HEA submits that these penalties are inconsistent with the problem presented in this proceeding.

First, the Commission is not considering in this proceeding how to treat disqualified or defaulting auction winners. Rather, the Commission is considering

---

<sup>8</sup> See Public Notice, DA 97-679 (released June 2, 1997) (inviting comments on issues related to C-block debt restructuring).

<sup>9</sup> See Bechtel v. FCC, 957 F.2d 873, 881 (D.C. Cir. 1992) ("changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so").

its response to the financial difficulties which many C-block licensees encountered after the auction in accessing the capital markets. A response to this event does not require the Commission to rely on rules adopted for defaulting bidders and cases applying those rules.<sup>10</sup> Also, given the circumstances at issue here, imposing substantial penalties on C-block licensees does not ensure that existing or future bidders will have financing in place prior to an auction, nor would it deter future bidders from excessive bidding. Thus, the conduct at issue in this proceeding is not necessarily comparable to conduct which may lead to defaults in future auctions.<sup>11</sup>

The problem here is aptly described in words borrowed from Commissioner Ness: "Licensees with sound business plans have been enveloped by the cloud of marketplace uncertainty, and the flow of capital needed for continued build-out has been impeded."<sup>12</sup> Events subsequent to the auction, including loss of support from financial underwriters, delay in licensing, additional spectrum auctions, etc., made accessing the anticipated financing more difficult. It is within this context

---

<sup>10</sup> Were the Commission to rely on precedent, HEA submits that a more apt analogy is to the circumstances of high bidders whose compliance has been deficient through inadvertence or mistake. See, e.g., Longstreet Comms. Int'l, 12 FCC Rcd 1549 (WTB 1997); RFW, Inc., 12 FCC Rcd 1536 (WTB 1997); Southern Comms. Systems, Inc., 12 FCC Rcd 1532 (WTB 1997).

<sup>11</sup> The Commission claims that the penalties are appropriate because a licensee that elects one of the three new options will receive a benefit in having a certain amount of its debt forgiven. Order, ¶¶ 55, 65. This rationale too is flawed because it assumes that the bid price represents the value of the licenses despite the change in financial circumstances recognized by the Commission.

<sup>12</sup> Separate Statement of Commissioner Susan Ness (WT Docket No. 97-82), at 3 (released Oct. 16, 1997).

that the Commission should develop solutions for the problems encountered by C-block licensees and penalties which may be appropriate. In particular, the Commission has stated that penalties in auction-related proceedings must be "rationally related to the harm caused."<sup>13</sup> Where circumstances were not necessarily the result of a bidder's conduct, forfeiture of up to 100% of a downpayment does not appear rationally related to any harm, and would be an instance where such a forfeiture is "too severe a penalty."<sup>14</sup>

HEA supports the sentiments of former Chairman Hundt in pointing out that the goals of this proceeding are "not to maximize revenue from the C block, nor to punish debtors for their unwise bids."<sup>15</sup> Accordingly, HEA recommends that the Commission take another look at its response to the circumstances under which the financial difficulties for C-block licensees developed, and reconsider

---

<sup>13</sup> Implementation of Section 309(j) of the Communications Act -- Competitive Bidding: Second Report and Order, 9 FCC Rcd 2348, 2382 (1994); see also Fifth Report and Order, 9 FCC Rcd at 5564.

<sup>14</sup> Implementation of Section 309(j), 9 FCC Rcd at 2382.

<sup>15</sup> Affirming and Dissenting Separate Statement of Chairman Reed E. Hundt (WT Docket No. 97-82), at 3.

whether it is fair in this instance to assume that "licensees should pay what they bid" or suffer penalties based strictly on nonpayment of what they bid. See Order, ¶ 66.

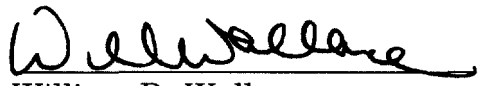
Respectfully submitted,

HYUNDAI ELECTRONICS AMERICA

Of Counsel:

Halfred M. Hofherr  
Senior Vice President  
General Counsel and Secretary  
HYUNDAI ELECTRONICS AMERICA  
3101 North First Street  
San Jose, CA 95134  
(408) 232-8000

By:

  
William D. Wallace  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 624-2500

Stuart H. Newberger  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 624-2500

Its Attorneys

Date: November 24, 1997

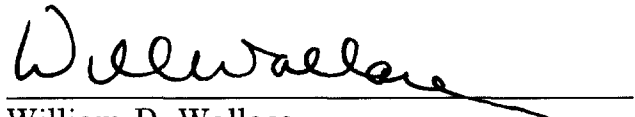


CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 24th day of November, 1997, caused to be served true and correct copies of the foregoing "Petition for Reconsideration" upon the following parties via hand-delivery:

A. Jerome Fowlkes  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5330  
Washington, D.C. 20554

Sandra Danner  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 7130-H  
Washington, D.C. 20554

  
\_\_\_\_\_  
William D. Wallace